

BEFORE THE THREE MEMBER DUE PROCESS PANEL
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION
PURSUANT TO RSMO SECTION 162.961

)	
)	
)	Petitioner,
Vs.)	
)	
BLUE SPRINGS R-IV SCHOOL)	
DISTRICT,)	
)	
)	Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a due process hearing requested by the parent and stepparent of minor regarding placement under IDEA. is a minor born. resides with his mother and stepfather within the Respondent District. was being educated by the Respondent District under an IEP which had determined that met eligibility criteria for specific learning disability in the area of written expression. was proposed to be transitioned to Blue Springs High School when the District was notified by the Circuit Court of Jackson County, Missouri, on or about July 15, 2003, that had been charged with two counts of statutory sodomy in the first degree – Class A felony under 566.062 RSMo.

On or about October 2, 2003, was found guilty of both counts by the Family Court. For most of the time from the charge until the spring of 2004, was confined by the Family Court at home with an ankle bracelet. As a result of that court placement, the District and parent agreed upon a homebound placement to implement 's IEP during his court-ordered homebound confinement.

, during his homebound confinement which was a part of his probation and parole determination by the Jackson County Family Court, received continuous homebound instruction by the Respondent District which was adjusted from time to time for the benefit of .

On or about March 24, 2004, the Family Court of Jackson County entered its order releasing from the jurisdiction of the court effectively terminating the conditions of his probation and parole.

Subsequent thereto, the Respondent District notified and his mother and stepfather of a hearing to be held before a committee appointed by the Board of Education under Board policy 5.51.3 on May 6, 2004. The Superintendent of the Respondent District notified the mother and stepfather that as a result of that hearing, the committee unanimously decided that there was reason to suspect that the attendance of in the Blue Springs R-IV School District at Blue Springs High School would create an immediate danger to the safety of others. The District would not allow to attend summer school or the regular school year of 2004-2005. There was no appeal filed as a result of this determination by the committee.

Contemporaneously with the interactions between the Respondent District and the petitioner, the Missouri legislature was amending Chapter 167.171 RSMo to include as a Safe Schools violation the crimes which the Respondent was found guilty of. That bill was passed by the Missouri legislature and signed into law by the Governor in June of 2004. The effective date of the inclusion of statutory sodomy under Section 566.062 RSMo will be effective August 28, 2004. The panel concludes that at the time the District concluded the Petitioner's attendance in the regular Blue Springs school setting

would be unsafe for other students, the same conclusion was being drawn by the Missouri legislature. The Administrative Committee of the school district had reasonable grounds to make such a determination.

On or about the 27th day of May, 2004, the IEP team reconvened. 's mother, , participated. The stepfather did not participate, nor did . The notation on the meeting attendance was that was unable to attend but gave input through his mother.

During the meeting, 's mother initially requested that stay on homebound but agreed to visit an outside placement at Belton Ozanam, a self-contained day treatment program offered through the Belton School District, a facility not within the Blue Springs R-IV School District. Notice of Proposed Action, dated May 27, 2004, documents that the IEP team considered continuing homebound services but determined that a less restrictive environment of a self-contained day treatment program would be appropriate to transition from homebound instruction, gradually increasing his time in regular education settings.

On or about June 28, 2004, the IEP team reconvened, at the request of the Petitioner, to further discuss placement options. At that meeting, Petitioner indicated disagreement with the proposed placement at a self-contained day treatment program and instead requested modified regular education placement consistent with initial special education placement implemented in February of 2001. The Respondent continued to support a self-contained day treatment program placement with transition plan for reintegration into regular education as the appropriate placement. This transition plan culminates in graduation and is documented in the Staffing Report dated June 28, 2004, associated the IEP review.

Ultimately, it was from this IEP determination that the parents bring this appeal.

What is presented before the panel was a determination of the Least Restrictive Environment for . The question to be determined was whether or not the actions of in committing acts of sodomy over a 2-year period in violation of RSMo 566.062 in combination with being removed from the regular education environment for the period of his conviction, his support needs for successful re-integration, and the safety needs of others, supported the finding of the IEP team that Belton Ozanam was the appropriate placement for . The petitioners introduced evidence at the hearing that had completed a sexual offenders program and that as a result of the completion of that program, the Family Court of Jackson County had released him from the conditions of his probation and parole. Petitioner introduced a psychological evaluation of Deborah Engelbrecht, a licensed psychologist, who found as a result of that evaluation that “would benefit from re-entering the routine school environment.” However, the evaluation recommended that continue in psycho therapy during his return to school the first semester to assist in adaptation. There was further oral testimony by Michael B. Ragan, M.S., licensed psychologist. Mr. Ragan was the person who took through its court ordered sexual offenders program. Mr. Ragan’s testimony basically was that had completed a workbook called the Pathways book. Mr. Ragan discussed the issues surrounding ’s conviction with and formed the opinion that had a sufficient understanding of the concepts to move on. The panel heard testimony from the stepfather, , who basically confirmed what Mr. Ragan said, and gave the opinion that he felt that placing at Belton Ozanam would not be helpful and would lead to further stigmatizing him and make it more difficult for to integrate in a regular high school setting. The panel notes that

neither Mr. nor anyone representing nor did himself (did not offer testimony) deny the fact that had committed the acts complained of in the Family Court nor was there any statement of remorse offered by or any member of his family. Respondent's Exhibit 10 notes distinct concern on the part of juvenile officers that 's lack of admission or remorse could lead to recidivism.

The panel determined that under the factual considerations and the seriousness of the offenses as recognized by the Missouri legislature, the Family Court of Jackson County and the School District of Blue Springs, the IEP of May 27, 2004, and staffing report of June 28, 2004, grants a Free and Appropriate Public Education in the Least Restrictive Environment. The IEP has in it appropriate opportunities for to gradually reintegrate into a broader public education setting and as drafted includes the opportunity for to return to the Blue Springs R-IV School District.

There was no specific objection to the programmatic placement of at Belton Ozanam or that the program offered there would not provide Free and Appropriate Public Education.

Therefore, the panel affirms the IEP of May 27, 2004, and Staffing Report of June 28, 2004, and denies the appeal of the Petitioners. This decision was rendered before August 26, 2004, the date of decision agreed to by the parties.

Dated: August 19, 2004

SO ORDERED:

/s/ Robert P. Baine, Jr.
Robert P. Baine, Jr., Chairperson

/s/ Joan Coulter

Concur: Joan Coulter

/s/ Diane Golden

Concur: Diane Golden